



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 6, 2002

Ms. Tamara Pitts  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2002-6951

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173274.

The Fort Worth Police Department (the "department") received a request for all records, photographs, and toxicology reports pertaining to the investigation of the death of a named individual. You state that the majority of the requested records have been released to the requestor. You claim, however, that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You contend that some of the submitted documents are mental health records that are protected from disclosure under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose,

evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See* Health and Safety Code § 611.001. Sections 611.004 and 611.0045 provide for access to mental health records only for certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the mental health records that may only be disclosed as provided by the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

Finally, the documents you have submitted as Exhibit E are polygraph examination results. Section 1703.306(b) of the Occupations Code provides that “[a] governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.” The department must withhold the submitted polygraph examination results under section 552.101 of the Government Code in conjunction with section 1703.306(b) of the Occupations Code.

In summary, mental health records must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The department must withhold polygraph examination results pursuant to section 552.101 of the Government Code in conjunction with section 1703.306(b) of the Occupations Code. As we address the submitted information in its entirety under these provisions, we do not reach your other claims under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body

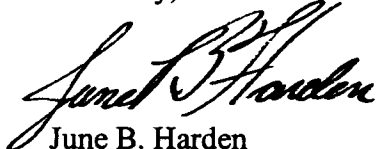
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/DRS/seg

Ref: ID# 173274

Enc: Submitted documents

c: Mr. Jimmy Warriner  
917 Hallum Street  
Fort Worth, Texas 76114  
(w/o enclosures)